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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,637	03/05/2002	Kurt R. Linberg	P-8557.05	9741

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MEDTRONIC, INC.  
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EXAMINER

EVANSKO, GEORGE ROBERT

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/091,637

Applicant(s)

LINBERG, KURT R.

Examiner

George R Evanisko

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 21-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The subject matter which was not described in the specification is the programmer running dedicated software to access the remote data center “such that commands entered on the programmer are executed as if entered directly on the remote data center”, in combination with the other elements in the claim. This element was not described in the original specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 21, “using a communications protocol” is inferentially including the communications protocol. The protocol has not been positively recited and it is unclear if the applicant intends to claim the protocol. In addition, the limitation is more like a method step, “using...”, than a structural limitation. It is suggested to use something similar to “the

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programmer including a communications protocol...". In addition, "runs dedicated software" is inferentially included and more like a method step.

In claim 22, "various clinical data" is inferentially included; "are delivered" makes the claim incomplete for omitting an essential element for delivering the data (no structure has been set forth to deliver the data and it is unclear what element is providing the delivery); "a database" is inferentially included.

In claim 23, "executable commands" are inferentially included; "the processor" lacks antecedent basis; "are delivered" makes the claim incomplete; "imbedded systems" is inferentially included.

In claim 25, several letters are missing from the words "usag", "th", and "betwe n".

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 21-23 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Snell (6249705).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell.

Snell discloses the claimed invention except for the database including usage logs including clock/timer data relating to the number of connections between the programmer and an IMD and error logs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the medical computerized system as taught by Snell, with a database including usage logs including clock/timer data relating to the number of connections between the programmer and an IMD and error logs since it was known in the art that medical computerized systems use a database including usage logs including clock/timer data relating to the number of connections between the programmer and an IMD and error logs to provide a physician or programmer with information of when the IMD and programmer were both used and if any errors were encountered for determinations in FDA approval of the devices, for determining if the devices are faulty, and/or for determining the history of people programming the device and changes made to the devices.

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al (6477424).

Thompson discloses the claimed invention and shows in figures 6 and 7 the multiple computers connected through a network to the IMD, each computer capable of acting as a programmer and the other computer(s) being a remote based data center, the programmer being able to connect and receive information from the data center. Thompson does not disclose the data center being wireless and web-based. It would have been obvious to one having ordinary

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skill in the art at the time the invention was made to modify the computerized medical system as taught by Thompson, with a system that was wireless and web-based since it was known in the art that computerized medical systems use wireless and web based communications to provide a system that does not get tangled with wires, is portable, and uses a widely available, easy to use, web-based system.

Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al.

Thompson discloses the claimed invention except for programmer software updates and the database including usage logs including clock/timer data relating to the number of connections between the programmer and an IMD, performance parameter logs, and error logs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the medical computerized system as taught by Thompson, with programmer software updates and a database including usage logs including clock/timer data relating to the number of connections between the programmer and an IMD, performance parameter logs, and error logs since it was known in the art that medical computerized systems use a database including usage logs including clock/timer data relating to the number of connections between the programmer and an IMD, performance parameter logs, and error logs to provide a physician or programmer with information of when the IMD and programmer were both used and if any errors were encountered for determinations in FDA approval of the devices, for determining if the devices are faulty, and/or for determining the history of people programming the device and changes made to the devices. In addition, it was known in the art that medical computerized

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systems provide programmers with software updates to keep the programmers updated with new and current software that increases the ability of the programmers or fixes errors in the software.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 703 308-2612.

The examiner can normally be reached on M-F 6:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
George R Evanisko  
Primary Examiner  
Art Unit 3762

9/22/4

GRE  
August 22, 2004